Filed 2/27/19 Ramirez v. State Personnel Bd. CA3

NOT TO BE PUBLISHED



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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| ERNESTO RAMIREZ, JR.,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>STATE PERSONNEL BOARD et al.,<br><br>Defendants;<br><br>DEPARTMENT OF CORRECTIONS AND REHABILITATION et al.,<br><br>Real Parties in Interest and Respondents. | C080298<br><br>(Super. Ct. No. 39201400311304CUWMSTK) |

Plaintiff Ernesto Ramirez, Jr., a correctional officer, was arrested by the Merced Police Department (Merced Police) for driving under the influence of alcohol while off duty. In the criminal proceeding that followed, Ramirez successfully moved to suppress evidence from his detention and arrest under the exclusionary rule -- a rule applied to safeguard against future constitutional search and seizure violations by excluding

illegally seized evidence. The criminal court granted the suppression motion because Ramirez's detention was initiated on private property and there was no evidence presented showing the private property met the Vehicle Code requirements to make traffic violations enforceable on that property.

Ramirez sought to suppress the same evidence in the administrative disciplinary proceeding before defendant State Personnel Board (Board) following his dismissal and termination of his employment with real party in interest California Department of Corrections and Rehabilitation (Department). In its opinion and decision (decision), the Board denied the suppression motion and affirmed Ramirez's dismissal. The trial court upheld the decision.

On appeal, Ramirez argues the exclusionary rule should have been applied to his administrative disciplinary proceeding, and the Board was collaterally estopped from relitigating whether he was unlawfully detained and arrested. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### I

### *Ramirez Is Arrested For Driving Under The Influence*

The facts are undisputed and Ramirez and the Department[1] agree the decision sets forth the pertinent facts. We, therefore, borrow liberally from the Board's decision.

On December 10, 2011, Ramirez attended a get-together at the home of a fellow correctional officer, Jorge Molina. At the get-together, Ramirez was in possession of his off-duty firearm while consuming alcohol, which was against Department policy. Ramirez also passed his firearm around to other guests at Molina's house.

Ramirez later drove himself and Molina to a local bar, where they consumed a pitcher of beer. Ramirez took his off-duty firearm with him. Around 1:30 a.m., Ramirez

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[1] The Department filed a respondent's brief; the Board did not file a brief in this appeal.

got into a verbal altercation with a group of males. Ramirez identified himself as a peace officer and displayed his badge. He also said he had a firearm on him and was not afraid to use it, or words to that effect. The security guard told everyone to leave and started to clear out the bar. When some of the patrons refused to leave, someone called the local police.

Ramirez, Molina, and three men left the bar in Ramirez's car; Ramirez was driving. Around the same time, Merced Police Officer Jesse Padgett arrived to follow-up on the request for help. Officer Padgett observed Ramirez speeding through the parking lot and failing to stop at a posted four-way stop. He activated his patrol lights to pull Ramirez over. Although Ramirez initially applied his brakes, he failed to yield and continued to drive through the empty parking lot in an erratic manner.

When Officer Padgett activated his patrol siren, Ramirez continued to drive for another eight seconds before pulling over. Ramirez was arrested for driving under the influence after he failed to perform the field sobriety tests in a satisfactory manner and his blood-alcohol level tested at 0.16 percent. During his discussion with Officer Padgett, Ramirez sought leniency based on his employment as a correctional officer. He referenced "law enforcement courtesy," which is a practice of one peace officer giving leniency to another for legal violations. Ramirez also told Officer Padgett other police officers had extended him the courtesy in the past. Ramirez was rude and condescending and failed to assist in locating his off-duty firearm, which was eventually discovered in the glove box.

Ramirez was later interviewed by the office of internal affairs. During his interview, Ramirez was dishonest in that he denied using his employment to seek leniency or favors from Merced Police, traveling at high speed through the parking lot and failing to stop at a stop sign, and failing to yield to Officer Padgett's patrol lights and siren.

II

*The Criminal Case Is Dismissed*

Ramirez was charged with driving under the influence of alcohol in violation of Vehicle Code section 23152, subdivisions (a) and (b). In that proceeding, Ramirez filed a motion to suppress evidence of his detention and arrest. The trial court granted the motion and dismissed the case, and the appellate division of the trial court affirmed the ruling.[2/3]

The appellate division noted Officer Padgett turned on his lights and siren to initiate the stop while the vehicles were still in the bar's "private, commercial parking lot." When the vehicles came to a stop on a public street, Officer Padgett "drew his weapon and ordered [Ramirez] out of the car." The appellate division explained traffic violations are unenforceable on private property unless the local political subdivision enacts an ordinance permitting traffic violation enforcements on the property and the property has a sign to that effect erected on it. (See Veh. Code, §§ 21107, 21107.8.) Because there was no evidence the bar's parking lot satisfied the statutory provisions, the appellate division agreed the warrantless detention was illegal and evidence flowing therefrom could not be introduced at trial.[4]

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[2] The ruling in the criminal proceeding is not subject to this appeal.

[3] The administrative record on appeal includes only the appellate division's order; we do not have copies of the parties' briefs, the trial court's order, or a transcript from the hearing on the suppression motion. The appellate division's order does not specifically identify what evidence was suppressed.

[4] Although the decision contains a heading stating, "**The Investigative Stop Was Unreasonable,"** the appellate division did not make such a finding because "the threshold question of whether Officer [Padgett] could indeed stop a driver for traffic violations on private property" was never met and, therefore, the trial court properly granted the suppression motion.

III

*The Board Upholds The Department's Termination Of Ramirez's Employment*

The Department served Ramirez with a notice of adverse action on December 5, 2012 (notice). In the notice, the Department advised Ramirez he was dismissed from his position as a correctional officer as of December 12, 2012, for using his status as a correctional officer to gain favor with the local police department during the stop for suspected driving under the influence, violating Department policy by carrying a concealed weapon off duty while intoxicated or drinking, and being dishonest during his investigatory interview.[5] Specifically, the Department cited the following violations of Government Code section 19572: inexcusable neglect of duty, dishonesty, discourteous treatment of the public or other employees, willful disobedience, and other failure of good behavior of such nature to cause discredit to the appointing authority or the person's employment.

Ramirez's union appealed his dismissal to the Board.[6] In the administrative proceeding, Ramirez argued the criminal court "found that [his] detainer and subsequent arrest by Officer Padgett was unreasonable" and "[c]onsequently, the evidence in support of [his] detention and arrest [had to] be suppressed." He also asserted "all evidence obtained during [his] internal affairs investigation [had to] be excluded since the evidence [wa]s a product of [his] unlawful detainer" as fruit of the poisonous tree, and collateral estoppel barred relitigation of "the validity of [Officer] Padgett's detention and arrest." Specifically, Ramirez requested "[a]n order suppressing all evidence used to support the allegations in [the notice]."

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**5** Molina was also served with a notice terminating his employment as a correctional officer.

**6** The union also appealed Molina's dismissal. The Board consolidated the two appeals; however, Molina's dismissal is not at issue in this appeal.

The Board denied Ramirez's motion to suppress, finding: "The facts in the instant case do not warrant the application of the exclusionary rule. Excluding the evidence gathered during the unlawful vehicle stop from this disciplinary hearing would have no deterrent effect on the [Merced Police]. The [Merced Police] is an independent law enforcement agency and there was no evidence that [the Department] initiated, directed or in any way participated in the vehicle stop. This instant hearing concerns a personnel matter only and is unrelated to the objectives of law enforcement. Finally, applying the exclusionary rule in this instance would undermine [Ramirez's and Molina's] obligation to conduct themselves in a manner beyond reproach." The Board also found the fruit of the poisonous tree doctrine inapplicable based on its finding that the exclusionary rule did not apply.

The Board found collateral estoppel inapplicable because the Department did "not contend that the vehicle stop was invalid in the first place," the criminal proceeding concerned Ramirez's alleged criminal violations whereas the disciplinary hearing concerned his misconduct irrespective of his criminal conduct, and the Department was not a party to the criminal proceeding or in privity with Merced Police.

Ramirez filed a petition for rehearing, which was denied; he then filed a verified petition for writ of administrative mandate in the trial court, seeking to set aside the Board's decision. The trial court entered judgment denying the petition and Ramirez filed this appeal.

## DISCUSSION[7]

### I

### *The Exclusionary Rule Does Not Apply*

We independently review the legal question whether, in the administrative disciplinary proceeding before the Board, the exclusionary rule bars admission of evidence recovered during the Merced Police's unlawful detention. (*Department of Transportation v. State Personnel Bd.* (2009) 178 Cal.App.4th 568, 575 (*Department of Transportation*).) This determination is made on a case-by-case basis. (*Emslie v. State Bar* (1974) 11 Cal.3d 210, 229-230 (*Emslie*).)

The exclusionary rule is a judicially created remedy designed to safeguard against future violations of the United States Constitution's Fourth Amendment prohibition against unreasonable searches and seizures. (*People v. Tillery* (1989) 211 Cal.App.3d 1569, 1579.) As our Supreme Court explained: "The exclusionary rules of the criminal law are based upon the principle that the state should not profit by its own wrong in using in criminal proceedings evidence obtained by unconstitutional methods; and upon the premise that by denying any profit to law enforcement officers who may be tempted to use illegal methods to obtain incriminating evidence (i.e., by not allowing the use of such evidence at the trial), the rules will have a deterrent effect." (*Emslie*, *supra*, 11 Cal.3d at pp. 226-227.)

While, "[t]he exclusionary rule has obvious application to criminal proceedings," "it 'is rarely applied in civil actions in the absence of statutory authorization, although government agencies may be involved, and even though the government itself unlawfully seized the evidence.' " (*Department of Transportation*, *supra*, 178 Cal.App.4th at p. 576; see *Governing Board v. Metcalf* (1974) 36 Cal.App.3d 546, 548, 551 (*Metcalf*) [not

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[7] The matter was assigned to the panel as presently constituted in September 2018.

applied in proceeding to discharge teacher convicted of engaging in prostitution]; *Emslie, supra,* 11 Cal.3d at pp. 216-217, 229 [not applied in proceeding to revoke lawyer's license after he burglarized hotel rooms]; *Pating v. Board of Medical Quality Assurance* (1982) 130 Cal.App.3d 608, 612, 624 [not applied in physician disciplinary proceeding for dishonesty and falsification of records].) "The exclusionary rule is extended 'only to [civil] proceedings so closely identified with the aims of criminal prosecution as to be deemed "quasi-criminal." ' " (*Department of Transportation*, at p. 576.)

The quasi-criminal nature of an administrative proceeding is not, however, the determining factor for applying the exclusionary rule. Application of the rule must serve to advance the purpose of the rule, i.e., to deter the constitutional violation at issue. (*Emslie*, *supra*, 11 Cal.3d at pp. 226-227, 229.) We, thus, "consider first the extent to which application of the rule would deter the type of misconduct alleged in this case." (*Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1018.) "Against [the] deterrent effect, we [then] balance the social cost of applying the exclusionary rule" and the effect thereof on the integrity of the judicial process. (*Id.* at p. 1019; *Emslie*, *supra*, 11 Cal.3d at p. 229.)

As we explained in *Finkelstein*, "[c]ourts following *Emslie* have uniformly declined to apply the exclusionary rule in civil proceedings where the rule would not deter the unlawful [misconduct] at issue." (*Finkelstein v. State Personnel Bd.* (1990) 218 Cal.App.3d 264, 270.) As we did in that case, we conclude, because application of the exclusionary rule in this disciplinary proceeding would not deter the unlawful conduct by the Merced Police in the future, the rule does not apply.[8] (*Id*. at p. 271 [lack of deterrent

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[8] The parties disagree on whether the disciplinary proceeding is a quasi-criminal proceeding. We need not and do not address this point because we conclude application of the rule would have no deterrent effect.

effect precluded application of rule when search was motivated by desire to prepare for an office move, not a desire to uncover evidence damaging to the employee].)

We start from the premise that "[t]he police in making investigations of suspected criminal activity are, we surmise, generally completely unaware of any consequences of success in their investigative efforts other than the subsequent criminal prosecution of the suspected offender." (*Metcalf, supra*, 36 Cal.App.3d at p. 549.) We next note "[t]he deterrent value of the rule is at its greatest when the fruits of the [detention] will be required in evidence at a proceeding to which the rule applies. Hence, the police officer, engaged in the task of investigating criminal activity, knows the fruits of his or her labor will be used, if at all, in a criminal prosecution in which the exclusionary rule will be applied. When, however, use of the fruits of the [detention] in a proceeding to which the rule applies is less certain, the deterrent effect of the rule is proportionately weaker." (*Conservatorship of Susan T.*, *supra*, 8 Cal.4th at p. 1018.) Certainly not every investigative stop and detention by a police officer leads to an administrative disciplinary proceeding.

Punishing *the Department* in the administrative disciplinary proceeding before the Board by excluding evidence from the illegal detention will not deter *the Merced Police* from future unlawful detentions. The focus of the deterrence analysis must be on the actor who committed the Fourth Amendment violation.

When Officer Padgett unlawfully detained Ramirez, he had no knowledge Ramirez was a correctional officer and, thus, he had no knowledge the evidence from the detention would or could be used in a proceeding other than in the criminal proceeding. The unlawful detention occurred when Officer Padgett activated his patrol lights and siren and then drew his weapon when the vehicles came to a stop. (See *People v. Ellis* (1993) 14 Cal.App.4th 1198, 1202, fn. 3 [" '[T]he police can be said to have seized an individual "only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." ' [Citation.]

[When] an officer activates the overhead red lights of his police car, stops the car, and asks the driver for his or her license, a reasonable person would believe that he or she is not free to leave."].) The unlawful detention occurred before Officer Padgett and Ramirez had any interaction; Ramirez's attempt to seek "law enforcement courtesy" based on his employment occurred later.

Borrowing language from our Supreme Court and applying it to this case, we conclude "the bungling police officer is not likely to be halted by the thought that his unlawful conduct will prevent the termination of [employment] because the [Board] cannot consider the evidence that he unlawfully procures. When, as in the instant case, the police are not even aware that a suspect is a [correctional officer], the supplemental deterrent factor is, of course, completely absent." (*In re Martinez* (1970) 1 Cal.3d 641, 649-650; *Emslie, supra*, 11 Cal.3d at p. 229 [applying exclusionary rule in attorney disciplinary proceeding would have "practically no deterrent effect upon any law enforcement officer who might be tempted to use unconstitutional methods to obtain evidence for use in a criminal trial"].) Further, the Merced Police was "already 'punished' by the exclusion of the evidence in the state criminal trial . . . so that the entire criminal enforcement process, which is the concern and duty of these officers, is frustrated." (*United States v. Janis* (1976) 428 U.S. 433, 448, fn. omitted [49 L.Ed.2d 1046, 1057].)

Ramirez argues our decision in *Dyson v. State Personnel Bd.* (1989) 213 Cal.App.3d 711 (*Dyson*) is on point and stands for the proposition that "the deterrence factor is present" "because subsequent civil discipline . . . [wa]s foreseeable at the time of the detention." Not so. As we explained, Officer Padgett did not know of Ramirez's occupation at the time of the detention and, thus, a subsequent disciplinary proceeding was not "foreseeable." *Dyson* is also inapposite.

In *Dyson*, a school's security officer conducted a search of a school employee's home after receiving word from the employee's estranged wife that her husband was

stealing state property. (*Dyson*, *supra*, 213 Cal.App.3d at pp. 715-717.) The employee sought to exclude evidence of the search in his administrative dismissal proceeding before the Board after the search was deemed unconstitutional in the related criminal proceeding. (*Id*. at p. 714.) The administrative law judge and the Board, however, used the evidence to support his dismissal. (*Id.* at p. 717.)

In the appeal that followed, "the narrow question we consider[ed] [wa]s whether the law requires the exclusion from an administrative disciplinary proceeding of evidence unconstitutionally seized from the employee's home *by an agency employee* who is a peace officer searching for evidence of theft of agency property." (*Dyson*, *supra*, 213 Cal.App.3d at p. 719, italics added.) We concluded the evidence should have been excluded and the Board was collaterally estopped from denying the constitutional validity of the search. (*Id*. at p. 715.) We explained: "Because of the particular nature of the investigation of this case and the extent of agency involvement we conclude that the exclusionary rule applies to remedy the agency invasion of its employee's constitutional rights. The same policy of deterrence would be served by the application of an exclusionary rule in circumstances such as those present here as is served in the application of the rule in criminal proceedings." (*Id*. at p. 722.)

Our opinion in *Dyson* turned on the crucial point that the evidence seized "was in no way the independent product of police work" but, instead, the product of the search directed and conducted by the agency that employed Dyson. (*Dyson*, *supra*, 213 Cal.App.3d at pp. 718-719.) Therefore, "[t]he unconstitutional search could not have [had] a tighter nexus with the agency that s[ought] to profit from it" because the deterrent effect of the exclusionary rule "would [have] work[ed] directly on the agency conducting the search for evidence of crime." (*Id*. at pp. 721, 719.)

The contrary is true here. The detention in this case was not requested by the Department, nor was it performed by the Department. There is no indication the detention was for evidence for disciplinary purposes and thus no motive by Officer

Padgett to use the evidence in that manner. Further, there is no nexus tying the Department to the detention conducted by the Merced Police. As we explained in *Finkelstein*, "[b]ecause of th[ese] factual difference[s], the deterrent effect of the exclusionary rule, which was found potent in *Dyson*, is lacking here." (*Finkelstein v. State Personnel Bd., supra,* 218 Cal.App.3d at p. 271.)

We agree with the Department that *Richardson* and *Department of Transportation* are persuasive. In *Richardson*, a San Francisco police officer appealed her dismissal following an administrative disciplinary hearing. (*Richardson v. City and County of San Francisco Police Com*. (2013) 214 Cal.App.4th 671, 674.) The officer sought to exclude evidence from the Antioch Police Department's search of her home in the disciplinary proceeding; the search was previously found illegal in a federal civil rights action. (*Id.* at pp. 699, 682, fn. 9.) Our colleagues concluded application of the exclusionary rule would not meet the deterrence factor, explaining: "Excluding evidence of what occurred after the Antioch [Police Department's] illegal entry into Richardson's home would serve no deterrent purpose. The illegal search was conducted by the *Antioch* Police Department. The disciplinary charges against Richardson were brought by the *San Francisco* Police Department. The [San Francisco Police Department] played no role in the illegal entry. . . . '[P]unishing the [San Francisco Police Department] would not deter the Antioch Police Department . . . from future violations.' " (*Id.* at p. 700.)

Ramirez argues *Richardson* was incorrectly decided because the court did not consider *City of New Brunswick v. Speights* (1978) 157 N.J. Super. 9, which recognizes deterrence "where a law enforcement officer faces criminal charges resulting from an unlawful detention because subsequent civil discipline (e.g., termination of employment) is foreseeable at the time of the detention."[9] There are three problems with Ramirez's

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**9** *City of New Brunswick* has been cited in two California opinions. In *Williams*, our Supreme Court declined to "consider whether the exclusionary rule should apply to bar

argument. First, California courts are not bound by judicial opinions in other states. Second, the facts in *City of New Brunswick* are unlike the facts in *Richardson* and here -- where neither the San Francisco Police Department in *Richardson* nor the Department played any role or in any way participated in the unlawful conduct -- because Speights's employer participated in the illegal search by consenting to it, rendering the dictum[10] in that case unpersuasive. (*United States v. Speights* (3d Cir. 1977) 557 F.2d 362; *City of New Brunswick v. Speights*, *supra*, 157 N.J. Super at p. 12.)

Third and finally, the New Jersey Supreme Court in a later opinion foreclosed the broad reading of *City of New Brunswick* Ramirez tries to advance, explaining more than mere foreseeability that the illegally obtained evidence would be used in a future disciplinary proceeding is necessary for application of the rule to have deterrent effect. (*Delguidice v. New Jersey Racing Com*. (1985) 100 N.J. 79, 88 [application of the exclusionary rule " 'unlikely to provide significant, much less substantial, additional deterrence,' " because, "[a]lthough the offending officers could probably foresee the use of the fruits of [the Fourth Amendment violation] in a subsequent licensing or disciplinary hearing, see [*City of New Brunswick*], there [wa]s nothing to suggest that the

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consideration at a police disciplinary hearing of evidence obtained by unconstitutional methods." (*Williams v. City of Los Angeles* (1988) 47 Cal.3d 195, 202.) In doing so, the court noted diverging views on the issue, comparing *City of New Brunswick* -- based on its "dictum; exclusionary rule may be applicable in proceeding to discharge police officer" -- with California and Massachusetts cases finding the exclusionary rule inapplicable in administrative disciplinary proceedings. (*Williams*, at p. 202.) In *Dyson*, we compared the cases cited in *Williams*, and found *City of New Brunswick* inapplicable based on its facts. (*Dyson*, *supra*, 213 Cal.App.3d at p. 720.)

**10** We recognize *Dyson* incorrectly states the *City of New Brunswick* court "found, in dictum, that the policy of deterrence was applicable because of the foreseeability of a subsequent disciplinary hearing when the suspect was a police officer." (*Dyson*, *supra*, 213 Cal.App.3d at p. 720.) The *City of New Brunswick* court indicated in dictum that foreseeability *may* be enough to establish deterrence, but the court did not *find* that foreseeability was sufficient to do so. (*City of New Brunswick v. Speights*, *supra*, 157 N.J. Super at pp. 21-22.)

officers were actively motivated -- and it [wa]s unlikely that they were -- to assist the [administrative agency] in its regulatory functions at the expense of forfeiting all criminal indictments"].)

Ramirez's attempt to distinguish *Department of Transportation* fairs no better. In that case, the California Highway Patrol investigated a disturbance at a Department of Transportation facility, leading to the arrest of an employee for making criminal threats, fighting, and using offensive words. When the officer searched the employee's vehicle, he found a nine-millimeter handgun, two loaded magazines, and 23 loose rounds of ammunition in a fanny pack under the passenger seat. The officer searched the employee as well, finding methamphetamine, among other things. (*Department of Transportation*, *supra*, 178 Cal.App.4th at pp. 571-572.) The employee was dismissed from his position because of the incident and criminally charged with possession of a controlled substance and having a concealed firearm in a vehicle. (*Id*. at p. 572.)

The employee's motion to suppress evidence in the criminal action was granted. "Because the arrest was unlawful, the [California Highway Patrol] search was unlawful and any evidence obtained from it [had to] be suppressed." (*Department of Transportation*, *supra*, 178 Cal.App.4th at p. 573.) The employee also appealed the termination of his employment to the Board and asked the Board to apply the exclusionary rule to the evidence seized from his car and person. (*Ibid*.) On rehearing, the Board agreed, concluding " 'application of the exclusionary rule to th[o]se proceedings w[ould] have a strong deterrent effect on [California Highway Patrol] Officers in the future when they conduct investigations into possible criminal misconduct by state employees at state worksites.' " (*Id*. at p. 574.) The Department of Transportation filed a petition for writ of mandate in the trial court to overturn the Board's decision, which the trial court granted. (*Id*. at pp. 574-575.) The appellate court affirmed. (*Id*. at p. 580.)

The *Department of Transportation* court distinguished *Dyson* and explained: "Although an illegal search took place, it occurred during a criminal investigation, and was not conducted by the agency that employs the worker being disciplined. Excluding evidence in an administrative disciplinary proceeding would have no deterrent effect on a state law enforcement officer investigating reports of a crime occurring in another state agency." (*Department of Transportation*, *supra*, 178 Cal.App.4th at p. 571.) The court further applied the balancing test, stating: "Outweighing the minimal or nonexistent deterrent effect on the [California Highway Patrol] are the significant risks posed to the public and [Department of Transportation] workers of suppressing evidence of an employee who carries illegal drugs and a concealed firearm." (*Id*. at pp. 578-579.) The court further found "no egregious law enforcement behavior that 'shocks the conscience.' " (*Id*. at p. 578.)

Ramirez argues *Department of Transportation* is distinguishable because "it did not involve law enforcement officer discipline" and the court improperly "refused to consider whether the [California Highway Patrol] officer could have anticipated the disciplinary proceeding." Ramirez believes: "What is critical here is the fact that [he] was a law enforcement officer." Ramirez again points us to *Dyson* for the proposal that the deterrence factor may be met when there is a criminal investigation of a known law enforcement officer. As we have explained, *Dyson* does not stand for the proposition advanced by Ramirez and the case is clearly distinguishable. Further, we see no reason to distinguish *Department of Transportation* based on the employee's occupation; there is no special application of the exclusionary rule to correctional officers or law enforcement personnel. And, we decline the invitation to create one.

Like in *Department of Transportation*, the social costs associated with excluding the evidence here weighs in favor of denying Ramirez's motion to suppress. Government

employees "owe unique duties of loyalty, trust, and candor to their employers, and to the public at large. [Citation.] Public agencies must be able promptly to investigate and discipline their employees' betrayals of this trust." (*Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 725.) Further, law enforcement officers "must conduct their personal lives in a manner that is beyond reproach." (*Richardson v. City and County of San Francisco Police Com.*, *supra*, 214 Cal.App.4th at p. 700.) Here, Ramirez betrayed the trust bestowed in him by using his status as a correctional officer in a failed effort to gain favor with the local police department during the stop for suspected driving under the influence, violating Department policy by carrying a concealed weapon off duty while intoxicated or drinking, and being dishonest during his investigatory interviews. The social costs associated with excluding such evidence supports the Board's decision.

II

*Collateral Estoppel Does Not Apply*

Ramirez argues the Board was collaterally estopped from relitigating "the issue of whether [his] Constitutional rights were violated." He posits that, because the motion to suppress was granted in the criminal matter, the Board was precluded from considering the evidence of his unlawful detention and arrest. The Department argues the Board correctly decided collateral estoppel did not apply because the Board did not "adjudicate the 'validity of a search and seizure' " and the Board was not in privity with the district attorney in the criminal proceeding. We agree with the Department that collateral estoppel does not apply.

Issue preclusion bars relitigation of an issue decided in a previous court proceeding if: (1) the issue necessarily decided in the prior proceeding is identical to the one sought to be relitigated; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom preclusion is asserted was a party or in privity with a party in the prior proceeding. (*Dyson*, *supra*, 213 Cal.App.3d at p. 722.) Because the first element is lacking, we need not and do not address the privity element.

The issues necessarily decided in the criminal proceeding and upon which the final judgment was entered were whether (1) Ramirez's detention was unlawful and (2) evidence from the unlawful detention could be admitted at trial to prove the charges of two counts of driving under the influence -- that Ramirez was driving a vehicle "under the influence of any alcoholic beverage" (Veh. Code, § 23152, subd. (a)) or had "0.08 percent or more, by weight, of alcohol" in his blood while driving a vehicle (Veh. Code, § 23152, subd. (b)). Those issues were not "identical to the [issues] sought to be relitigated" in the Board proceeding. (*Dyson, supra,* 213 Cal.App.3d at p. 722.)

The Department did not litigate, nor did the Board consider or decide, whether the detention was lawful, or whether Ramirez was driving under the influence of alcohol. The charges before the Board were that Ramirez used his status as a correctional officer to gain favor with the local police department during a stop for suspected driving under the influence, violated Department policy by carrying a concealed weapon off duty while intoxicated or drinking, and was dishonest during investigatory interviews. The "issues to be resolved" in the Board proceeding were: "1. Did [the Department] prove the charges by a preponderance of the evidence? [¶] 2. If [the Department] proved the charges by a preponderance of the evidence, does [Ramirez's] conduct constitute a violation of Government Code section 19572, subdivisions (d) inexcusable neglect of duty, (f) dishonesty, (m) discourteous treatment of the public or other employees, (o) willful disobedience, and/or (t) other failure of good behavior? [¶] 3. If [Ramirez's] conduct violates Government Code section 19572, what is the appropriate penalty?"

The criminal court did not consider whether Ramirez's statements and conduct during the detention could be introduced for *noncriminal* purposes. The criminal court also did not consider or decide any issue relating to the admissibility of evidence from

before the unlawful detention (i.e., Ramirez's conduct and statements at Molina's house and the bar) or after the unlawful detention (i.e., Ramirez's statements to internal affairs)[11] -- evidence at issue in the Board proceeding. Thus, there was no basis for requesting "[a]n order suppressing all evidence used to support the allegations in [the notice]" on collateral estoppel grounds.

*Dyson* again does not assist Ramirez. In *Dyson*, the criminal and administrative proceedings dealt with the same issue and evidence -- whether the employee stole state property. Indeed, Dyson was dismissed based on a finding that he *stole* the property, the very charge dismissed in the criminal proceeding after the issue of the validity of the search was fully litigated. (*Dyson*, *supra*, 213 Cal.App.3d at pp. 714, 717; *People v. Torres* (1992) 6 Cal.App.4th 1324, 1332 [*Dyson* found the "administrative agency was not permitted to relitigate the *same charges* which had been quashed as a result of a successful [Penal Code] section 1538.5 motion in a court of law"].) Similarly, in *People v. Sims* (1982) 32 Cal.3d 468, cited and relied upon in *Dyson*, "the Supreme Court held that the administrative decision exonerating a welfare recipient of welfare fraud precluded the district attorney from pursuing a criminal action against the recipient for the *same* alleged misconduct." (*Dyson*, at p. 725, italics added.) Here, Ramirez was not terminated for the same alleged misconduct in the criminal proceeding (i.e., illegally driving under the influence of alcohol). *Dyson* and *Sims* are, therefore, distinguishable.

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**11** In the Board proceeding, Ramirez sought to suppress evidence from the internal affairs investigation, arguing it was fruit of the poisonous tree. The appellate division's order contains no mention of the fruit of the poisonous tree doctrine and does not discuss the internal affairs investigation. Ramirez does not raise the fruit of the poisonous tree argument on appeal.

## DISPOSITION

The judgment is affirmed. The Board and the Department shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/s/
Robie, Acting P. J.

We concur:

/s/
Murray, J.

/s/
Renner, J.